IN THE

Supreme Court of the United States

OCTOBER TERM, ~~1948.~~ '49

No. ~~436.~~ 14

EUGENE DENNIS, *Petitioner*,

v.

UNITED STATES OF AMERICA.

BRIEF OF NATIONAL LAWYERS GUILD AS AMICUS CURIAE IN PROCEEDINGS FOR WRIT OF CERTIORARI

NATIONAL LAWYERS GUILD,
ROBERT J. SILBERSTEIN,
Executive Secretary.

ARTHUR G. SILVERMAN,
11 West 42nd Street,
New York 18, New York,
Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 436.

EUGENE DENNIS, *Petitioner*,

v.

UNITED STATES OF AMERICA.

BRIEF OF NATIONAL LAWYERS GUILD AS AMICUS CURIAE IN PROCEEDINGS FOR WRIT OF CERTIORARI

STATEMENT.

The National Lawyers Guild is a bar association with a nation-wide membership. It is pledged, among other objects, "to protect and foster our democratic institutions and the civil rights and liberties of all the people."

The particular concern of this association with the questions presented by this petition are amply stated in our prior briefs *amicus curiae* in this court upon other petitions for certiorari to review convictions for contempt of the Committee on Un-American Activities involving some of the questions presented here. The National Lawyers Guild

believes that the denial of certiorari in this case would leave unreviewed a decision which makes a vital departure from the constitutional principles established by this Court, and would destroy protection heretofore afforded to our basic democratic institutions and the civil rights and liberties of all the people. For these reasons it has secured the consent of the parties to the filing of this brief as *amicus curiae*.

To avoid repetition we respectfully refer this Court to the arguments made and authorities cited in our briefs in support of the petition for certiorari in *Barsky et al.* v. *U. S.*, October Term, 1947, No. 766, the petition for rehearing in the same case, and *Josephson* v. *U. S.*, October Term, 1947, No. 535. These set forth and treat the constitutional and other legal grounds upon which we again urge here the inherent invalidity of the statute and resolution creating this Committee and the gross violations of constitutional right established and confirmed by the Committee's operations over the decade or more that it and its predecessor Committees have existed.

In particular relation to the Committee's operations, we refer to the argument made at pages 6-15 of the brief *amicus curiae* filed with this Court in the case of *Barsky* v. *U. S.* on behalf of the International Longshoremen's and Warehousemen's Union, and certain other international unions, wherein the writer appears as Counsel. In this connection, we contend that several offers of proof in this record relating to particular abuses practiced by this Committee, were excluded by the trial court contrary to the authority of *Thornhill* v. *Alabama*, 310 U. S. 88, 98, and *Yick Wo* v. *Hopkins*, 118 U. S. 356, 373-374.

These offers included the Committee's compilation of a blacklist of hundreds of thousands of persons whose activities were not unlawful but whose views it disapproved, all for the calculated purpose of stigmatizing and depriving these persons of their livelihoods (J. A. 186-189); the Committee's public branding of the Southern Conference

for Human Welfare as disloyal without hearing of any kind (J. A. 190-191);* the Committee's imposition of a condition upon this petitioner's right to testify which it had studiously withheld from other witnesses (J. A. 199-200); the Committees' branding as disloyal a long list of prominent Americans, many of them in high public office (J. A. 214-215); the constant singling out of groups and individuals for "investigation" solely on the basis of the personal disapproval of their views by individual committee members (J. A. 274-275, 278, 281-283).

These offers should have been received under a rule of proper latitude. Their exclusion was reversible error. *Thornhill* and *Yick Wo* cases *supra*. The actual practices of the Committee are perhaps the best evidence of the validity or invalidity of the reasons advanced in support of the statute, challenged in the instant case as violating the guarantees of the First Amendment.

In this brief we shall confine ourselves to the presentation of additional matters which in our view demonstrate clearly the urgent necessity of a determination by this Court of the constitutional issues presented by this case.

---

* This particular episode is the subject of an incisive analysis by Professor Gellhorn, "*Report on a Report, etc.—Harvard Law Review,*" *Vol. LX-No.* 8-P 1193, which we believe pointedly confirms the soundness of our entire argument based on the committee's manner of operation.

ARGUMENT.

Recent Activities of the Committee and the Mounting Public Concern Which They Evoked Compel the Conclusion that this Court Should Now Determine the Constitutional Validity of the Statute and Resolution Establishing the Committee and Its Proceedings Thereunder.

The vague and indefinite character of the statute and resolution creating the Committee has inevitably left it without any real limitation whatever upon its power. Recently it has gone even further afield than theretofore. Not content with ranging its weapons of intimidation and injustice over the total field of opinion and association, it has undertaken to supplant, or interfere with, the functions of the Department of Justice in the field of espionage. The Committee's new rampage of publicity-seeking has unquestionably increased the growing awareness of its threat to civil rights, due process, and the very democratic structure of our system of administering justice.

This increased awareness was perhaps most dramatically registered by President Truman's flat declaration last August that the Committee's so-called espionage inquiry violated the Bill of Rights. *Washington Evening Star, August 19, 1948, p. 1.* No less sharp was the Attorney General's own statement that followed, condemning the same inquiry as "an attempted encroachment upon the independent integrity of a coordinate branch of government" and "contrary to our democratic system." *Department of Justice Release, September 29, 1948.* This latter condemnation was pointedly justified when, during the Grand Jury's espionage inquiry in the Southern District of New York, the Committee undertook to call Grand Jury witnesses to a public hearing in a parallel inquiry of its own. The result was an open and unseemly conflict with the Department of Justice.

These events eliciting, as they have, such sharply worded charges of encroachment from the highest executive authority, point unmistakably to the public need for a final determination by this court of the Committee's entire scope and authority, including the validity of its very establishment, the more so since a Committee spokesman has not hesitated to call it the "Grand Jury" of America. *91 Cong. Rec. 273.*

It is time, we believe, that the salutary limitation upon the power of congressional inquiry defined in *Kilbourn* v. *Thompson*, 103 U. S. 168 (1881), be again reaffirmed and applied to *this* Committee's performances and pretensions with all the clarity and rigor required for effective protection of the basic rights involved. Cf. *United States* v. *Lee*, 106 U. S. 196, 220 (1882); *McGrain* v. *Daugherty*, 273 U. S. 135, 176 (1926); *Jurney* v. *MacCracken*, 294 U. S. 125, 134 (1934); *Jones* v. *S. E. C.*, 298 U. S. 1, 25-26 (1935).

There are still other expressions of public awareness and protest which are highly persuasive of the same need. The President's Committee on Civil Rights has pointed to the public excitement over "communism" that this Committee has done so much to stimulate, as having engendered "a state of near hysteria" which "threatens to inhibit the freedom of genuine democrats". *To Secure These Rights, p. 49.* The House of Bishops of the Protestant Episcopal Church in the United States has declared in a unanimous resolution against the same hysteria "An inquisitorial investigation of men's personal beliefs is a threat to freedom of conscience . . . " *New York Herald Tribune, Nov. 8, 1947, p. 8.* Mrs. Eleanor Roosevelt had added her own warning—"The Un-American Activities Committee seems to me to be better for a police state than for the U. S. A." *Washington Daily News, October 29, 1947.*

It has been recognized that condemnation of this Committee and its practices had come from all sections of the population. " . . . no other committee of Congress . . . has ever engendered such widespread or bitter condemna-

tion from varied leaders of American thought." *Alan Barth, Washington Post,* May 30, 1948, p. 2-B. Dr. August Raymond Ogden in a noted study of this Committee, published in 1945, said— " . . . it stands in the history of the House of Representatives as an example of what an investigating committee should not do." *Alan Barth, id.*

Similarly persuasive is the condemnation equally severe from influential circles abroad. According to an Associated Press dispatch from London—"Newspapers of the left, center and right alike used such terms as 'Hollywood witch hunt', 'nauseating spectacle' " to describe the Committee's notorious Hollywood hearings. *P. M., October 27, 1947, p. 3;* cf. *Lawson* v. *U. S.,* 93 L. Ed. 42, Nov. 8, 1948. . The *London Observer* in an editorial on the same subject entitled "Star Chamber" said—"Why then should Americans in the film industry not enjoy that freedom of thought guaranteed by the constitution? . . . it would be a poor bargain to keep the atom secrets and lose those freedoms which are the secret of America's greatness." *October 26, 1947, p. 4.* In Australia too, a well known commentator wrote of the same investigation—"I have no time for communism but consider this investigation is a witch hunt, a Donnybrook Fair, and a high pressure farce." *Don Iddon's Diary, Sunday Mail, Brisbane, November 2, 1947.*

These comments from abroad possess a special force in view of our government's adherence to the Declaration of Human Rights recently adopted by the United Nations General Assembly in Paris of which Articles 17 and 18 of the draft unanimously adopted by the Human Rights Commission are substantially an enactment of our own Bill of Rights—"Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." (Art. 17) and "Everyone has the right to freedom of assembly and association." (Art. 18)

We believe it is impossible to reconcile the authority claimed for this Committee with the democratic leadership

in world affairs which our championship of this Declaration is supposed to signalize. In our view the conclusions of Judge Clark in *Josephson* v. *U. S.*, 165 F. 2d 93, and of Justice Edgerton in *Barsky* v. *U. S.*, 167 F. 2d 241, on the invalidity of this Committee's entire authority, are the only ones consonant with the mandate of the Bill of Rights. Their essential soundness has been persuasively confirmed by the reactions of official and other influential circles here and abroad to the Committee activities which have recently climaxed an entire decade of abuses. Thus, it seems that public acceptance of the validity of the dissents of Judge Clark and Justice Edgerton have preceded their acceptance by the highest Court as was the case with the historic "Civil Rights" dissents of Justices Holmes and Brandeis in the 1920's.

We acknowledge, of course, that this Court may have already reached the conclusion that the views embodied in the dissents of Judge Clark and Justice Edgerton, which we support here, require immediate consideration in connection with a full hearing on the merits, since it has granted unlimited certiorari in *Eisler* v. *U. S.*, October Term, 1948, No. 255. If so, this case raises, among other issues, the same constitutional issue as the *Eisler* case touching the establishment and powers of the Committee, and the petitioner should be afforded an opportunity to argue these issues in his own case.

We earnestly urge the Court to grant this petition for certiorari.

Respectfully submitted,

NATIONAL LAWYERS GUILD,
ROBERT J. SILBERSTEIN,
Executive Secretary.

ARTHUR G. SILVERMAN,
11 West 42nd Street,
New York 18, New York,
Counsel.